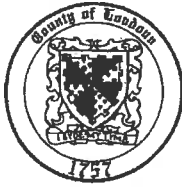


Tab 3



Loudoun County, Virginia

www.loudoun.gov

County Administration

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

At a public hearing of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, October 11, 2005 at 6:30 p.m.

PRESENT: Scott K. York, Chairman
Bruce E. Tulloch, Vice Chairman
James G. Burton
James E. Clem
Eugene A. Delgaudio
Sally Kurtz
Stephen J. Snow
Mick Staton Jr.
Lori L. Waters

IN RE: ZMAP 2002-0003/ C.D. SMITH PROPERTY

Mr. Snow moved that the Board of Supervisors suspend the rules.

Seconded by Mr. Delgaudio.

Voting on the Motion: Supervisors Burton, Clem, Delgaudio, Snow, Staton, Tulloch and York - Yes; None - No; Supervisors Kurtz and Waters absent for the vote.

Mr. Snow moved that the Board of Supervisors approve ZMAP 2002-0003, C.D. Smith Property, including the proffer statement dated October 11, 2005, the concept development plan dated May 2004, revised through May 12, 2005 and including the findings of approval contained in the October 11, 2005 staff report.

Seconded by Mr. Delgaudio.

Voting on the Motion: Supervisors Clem, Delgaudio, Snow, and Staton - Yes; Supervisors Burton., Tulloch, and York - No; Supervisors Kurtz and Waters absent for the vote.

COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS

c-zmap 2002-0003 - c.d.smith property

III. PLANNING COMMISSION REVIEW AND FINDINGS

The Planning Commission held an initial public hearing on this application on January 24, 2005. There were 3 members of the public that spoke regarding the application. One speaker was in favor and two were opposed to the development (based on proposed densities and additional vehicle trips). The application was referred to the February 14, 2005, June 6, 2005 (meeting postponed), and June 20, 2005 Committee of the Whole meetings to discuss outstanding issues. The primary issue during the deliberations at this time was the applicant's proposed 900-foot shift in the location of Route 659 Relocated (from the adopted CTP alignment) and a shift in the land use boundary between the Suburban and Transition Policy Areas.

During committee discussions, the Commission requested information regarding the environmental impacts of the new road alignment versus the adopted CTP alignment and the status of right-of-way acquisition for each of the alignments. Based on these questions, the County's Environmental Review Team conducted a quantitative analysis of both the CTP alignment and the alternate alignment between Prince William County and Route 50 as proposed in the Braddock Crossing, CD Smith, and Kirkpatrick Farms West rezoning applications. The conclusion of staff and the applicants' consultants was that the alignments, while having varying impacts on individual properties, had similar overall environmental impacts.

Regarding right-of-way acquisition, there were initial concerns regarding the applicant's alignment of Route 659 Relocated because of opposition from an affected landowner (a portion of their property was needed to construct the applicant's proposed alignment of Route 659 Relocated). Subsequent to the Planning Commission public hearing, the affected property owners withdrew their opposition to the applicant's proposed alignment.

During Commission discussions, it was noted that the coordination between applicants to create a more comprehensive regional road approach that could ensure the construction of Route 659 Relocated and expedite the completion of Route 659 improvements at Route 50 would be beneficial. Discussions between CD Smith, Braddock Crossing, Kirkpatrick West, and Stone Ridge are ongoing and may accelerate completion of a grid collector network consisting of Braddock Road, Route 659, Route 659 Relocated, Tall Cedars Parkway, and Route 50. The CD Smith Property is proposing to either construct four lanes of Route 659 Relocated or construct a half-section of the West Spine Road and a half-section of Route 659 Relocated. Staff supports this type of flexibility in order to complete the regional road network in the surrounding area.

In addition to the major concerns cited in the staff report, additional information was requested regarding wetlands impacts, pedestrian and bicycle access to the proposed County park on the west side of Route 659 Relocated, and some of the

zoning modification requests. The applicant has since provided additional details regarding these items. It was noted that a specific transit contribution had not been provided by the applicant. The applicant responded that road improvements totaling \$13,000 per unit were being proffered by the applicant and an additional transit contribution would not be financially feasible. Some members of the Planning Commission maintained that the proposal to shift the suburban land use boundary would provide a substantial benefit to the applicant (by allowing additional residential units) and that a \$500 per unit transit contribution would be appropriate, in this particular case.

The Planning Commission deliberations concluded that the application complies with the Revised General Plan based on the following findings:

- the Revised General Plan identifies the boundary between the Suburban and the Transition policy areas as following the Route 659 Relocated alignment through this area;
- the proposed shift in the suburban land use boundary is a minor adjustment;
- the proposal complies with the Countywide Transportation Plan since the road realignment is an acceptable shift.

The Planning Commission voted 5-2-2 (Herbert, Hsu opposed and Syska, Tolle absent) to forward the application to the Board of Supervisors, including the proffers, the concept plan, and the findings for approval, with a recommendation of approval. Subsequent to the Commission vote, the applicant informed staff that insufficient notice regarding the rezoning request had been given to the adjacent property owners; therefore, a new public hearing before the Commission was required. A new public hearing was held on September 19, 2005. One member of the public, representing the Piedmont Environmental Council, cited concerns regarding the capital facilities contribution proffered by the applicant. The Planning Commission forwarded the application to the Board with a recommendation of approval (8-0-1 Tolle absent).

C. D. SMITH
(ZMAP 2002-0003)

PROFFER STATEMENT

December 17, 2002

July 20, 2004

December 6, 2004

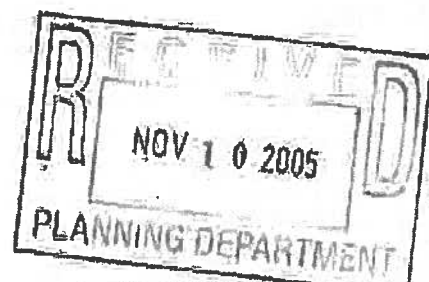
January 3, 2005

May 27, 2005

June 14, 2005

June 21, 2005

October 11, 2005



C. D. SMITH
PROPOSED STATEMENT
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Exhibits

- Exhibit A:** C. D. Smith Rezoning Application Plan Set, prepared by Urban Engineering & Associates, Inc., dated May 2004, as revised through May 12, 2005
- Exhibit B:** Design Modifications for C.D. Smith, dated January 3, 2005



PREAMBLE

Pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the Revised 1993 Loudoun County Zoning Ordinance, Two Greens/Kirkvest, LLC ("Owner"), owner of parcels 248-39-4888, 248-30-5519, and 248-29-4046, consisting of approximately 124.78 acres of real property (the "Property"), the subject of rezoning application ZMAP 2002-0003, hereby voluntarily proffers that development of the Property shall be in substantial conformity with the proffers as set forth below (the "Proffers") and with the exhibits and zoning ordinance modifications attached hereto, which are incorporated herein by reference. All Proffers made herein are contingent upon the approval by the Board of Supervisors of Loudoun County (the "Board") of the change in the zoning district requested in rezoning application ZMAP 2002-0003 from the PD-GI zoning district to the PD-H4 zoning district, administered as R-8 and R-16.

I. CONCEPT PLAN AND PHASING

A. Substantial Conformity

The Property shall be developed in substantial conformity with Sheets 1 through 8 of the Rezoning Application attached hereto as Exhibit A, dated May 2004, with revisions through May 12, 2005, prepared by Urban Engineering Associates, Inc. (collectively the "Concept Plan"). The Property shall be developed with no more than 455 residential dwelling units consisting of the following mix:

1. **Market Rate Dwelling Units**
 - 153 single family detached units (maximum)
 - 200 single family attached (maximum)
 - 73 multi-family units (maximum)
2. **Affordable Dwelling Units (ADU's)**
 - 14 single family attached
 - 15 multi-family units

The development and administration of the ADU's shall be in accordance with the provisions of Article VII of the Loudoun County Zoning Ordinance.

The Owner shall develop the Property in general conformance with the lot layout shown on Sheet 6 of the Concept Plan, except as needed to accommodate final engineering. Sheet 6 of the Concept Plan illustrates the general layout proposed for development of the Property and indicates development constraints on the Property such as open space areas. In addition, recreation uses will be located in the areas designated as the Community Park/Active Recreation and Community Park (Civic Space) as shown on the Concept Plan. At a minimum, a community center, a pool, a tennis court, a multi-purpose court, a tot lot and pedestrian trails shall be located in the Community Park/Active Recreation area. At a minimum, a parking lot, a picnic pavilion, a tot lot, a play meadow, a fishing pond, and pedestrian trails shall be located in the Community Park (Civic Space) area.

B. Garage Parking Restrictions

Each residential unit shall incorporate a garage. Prior to the first site plan or record plat approval for the Property, whichever is first in time, the Owner shall prepare and record a covenant which shall preclude the primary use of the garages for purposes other than for the storage of vehicles.

II. PUBLIC WATER AND SANITARY SEWER

The Property shall be developed using public water and sewer facilities, which shall be provided to the Property at no cost to the County or to the Loudoun County Sanitation Authority (LCSA).

III. STORMWATER AND WATER QUALITY

With the exception of construction of stormwater management facilities, surface drainage, trails, active recreation uses, and utility crossings, no land development activities shall be located and/or maintained in open space areas indicated on Sheets 6 and 7 of the Concept Plan. Disturbances permitted within open space areas of the Property shall be designed to minimize the area of disturbance, retain existing vegetation to the extent possible, and shall be designed and constructed in a manner to protect water quality.

The Owner shall develop the Property with Best Management Practices in accordance with the standards contained in the Facilities Standards Manual ("FSM").

IV. TRANSPORTATION

A. Road Network

Unless otherwise specified in the Proffers, all roads required for access to and within the Property will be constructed in accordance with the County of Loudoun's Land Subdivision and Development Ordinance and the FSM to provide access to the development parcels depicted on the Concept Plan as they are developed. All roads required for access to and within the Property will be designed and constructed in accordance with Virginia Department of Transportation ("VDOT") and County standards, unless modified otherwise. The Owner shall grant a public

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access easement for emergency vehicles over the private roads developed on the Property concurrently with the development of each section of the Property containing private roads.

The Owner shall dedicate to the County land necessary for construction of public roads which shall include all related easements outside the right-of-way, such as slope, maintenance, storm drainage and utility relocation easements. Dedication of right-of-way and easements shall occur either concurrently with development of each section of the Property or upon request by the County in advance of development on the Property by the Owner if: (1) others have prepared construction plans and profiles consistent with the Concept Plan that require dedication to commence construction; and (2) provided the Owner shall not be obligated to incur costs or post bonds with the County in connection with such dedication.

B. Construction of Transportation Improvements

Transportation improvements shall be constructed by the Owner or his successor-in-interest in the following manner:

1. Concurrent with or prior to approval of the first record plat or site plan, whichever is first in time, for the Property, the Owner will:
 - a. Dedicate right-of-way 120 feet in width through the Property for Relocated Route 659 and construct or bond for construction a half-section of a four lane divided roadway, including turn lanes as required by VDOT, at the site entrance, between the northern Property boundary and the southern Property boundary.
 - b. Construct or bond for construction a half-section of a four-lane divided roadway, including turn lanes as required by VDOT, from the southernmost Property boundary to Braddock Road (Route 620).
2. Concurrent with or prior to approval of the record plat or site plan containing the 203rd residential unit, the Owner will:
 - a. At the County's option, either construct or bond for construction for Relocated Route 659, the second half-section of a four lane divided roadway, including turn lanes as required by VDOT, between the northern Property boundary and the southern Property boundary or construct or bond for construction a half-section of the West Spine Road, a four-lane divided roadway, from Route 50 to Tall Cedars Parkway so long as all necessary right-of-way has been dedicated to the County and all necessary easements are provided to the Owner at no cost.

The Owner shall request, in writing, that the County select an alternative described above no later than the approval of the record

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plat or site plan, as applicable, containing the 75th residential unit. Such written request shall be submitted concurrently with the submission of the record plat or site plan, as applicable, containing the 75th residential unit. In the event the County does not select an alternative in a manner consistent with this paragraph, the Owner shall select an alternative from Proffer IV.B.2.a.

C. Cash Equivalent Contribution

Unless otherwise provided in these proffers, the Owner shall contribute to the County, or its designee, including a Community Development Authority ("CDA") or one or more private parties who collectively agree to construct public roadway improvements, an amount equal to the actual cost of constructing the transportation improvements (in the event the improvement is constructed) or an amount equal to the bonded cost estimate (in the event the improvement is bonded for construction), described above in Proffer IV.B 1.a and b and IV.B 2.a, in lieu of actual construction if said improvements have been either constructed or bonded by others prior to bonding for construction by the Owner. For the purposes of determining the in-lieu-of contribution, construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based on paid invoices. Such contribution in lieu of actual construction shall be paid at the time the Owner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, such contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway improvements in the same Planning area as the Property.

D. Tri-County Parkway

Since the segment of Relocated Route 659 located between Route 50 to the north and the Prince William County boundary to the south is incorporated as Segment D in the Environmental Impact Statement (EIS) for the Tri-County Parkway, and in an effort to facilitate the review by the County, VDOT and the Federal Highway Administration of the alignment of Relocated Route 659 shown on the Concept Plan, which alignment deviates from the alignment currently under study by VDOT and FHA in the Tri-County Parkway EIS, the Owner of the Property agrees to deliver to Loudoun County and VDOT the "Route 659 Relocated Alignment Study prepared by Urban Engineering & Associates, Inc., dated March 2004, and the wetlands delineation, Phase 1 Archeology Study and Threatened and Endangered Species Study for the section of Relocated Route 659 that traverses the Property to facilitate preparation of the Final EIS for Segment D, if Segment D is recommended as the preferred alignment for the Tri-County Parkway in Loudoun County by the Commonwealth Transportation Board (CTB). These studies will be delivered to the County and VDOT within one month of the date of selection of Segment D by the CTB as the preferred alternative for the Tri-County Parkway and before commencement of the Final Phase EIS. Delivery of the above-referenced Alignment Study and studies shall in no way result in suspension of the rezoning process for ZMAP 2002-0003, unless said suspension is mutually agreed upon by the Owner and the County.

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E. Interparcel Access

1. The Owner shall construct on-site roads to the southern Property boundary in the location generally shown on the Concept Plan in order to provide for interparcel access. Said interparcel access shall be constructed, by others, at the time of development of the adjacent property and as approved by the County and VDOT.

2. The Owner shall provide a notice in all sales documents that certain lots are located on a street that is planned to be converted to a through street in the future.

F. Highway Noise Buffers

At the time of filing of an application for each preliminary subdivision approval for a portion of the Property fronting Relocated Route 659, the Owner shall establish to the reasonable satisfaction of the County that the residential units to be located along the Relocated Route 659 frontage of the Property shall be in conformance with the noise standards in the Loudoun County Facilities Standards Manual and the Zoning Ordinance.

G. Multi-Purpose Trail

Concurrent with or prior to approval of the first record plat or site plan, whichever is first in time, for the Property, the Owner shall bond and/or construct an eight (8) foot wide asphalt multi-purpose trail within the right-of-way along Relocated Route 659 frontage (east side) of the Property as generally shown on Sheet 6 of the Concept Plan. If the trail is not permitted by VDOT to be located within the right-of-way then the trail shall be constructed within a twelve (12) foot wide public access easement and maintained by the Homeowner's Association in the approximate location as shown on the Concept Plan.

H. Off-Site Rights-of-Way

The Owner shall attempt to acquire all right-of-way necessary to construct the above improvements through good faith efforts to purchase such property at fair market value. Where right-of-way and/or easements necessary for the construction of the above improvements cannot be obtained, the Owner shall request that the County, in its discretion, acquire such right-of-way and/or easements by appropriate eminent domain proceedings by the County, with all costs associated with the eminent domain proceedings to be borne by the Owner, including, but not limited to land acquisition costs.

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Notwithstanding the above and pursuant to Proffer IV.B.2.a., this proffer shall not apply to the West Spine Road improvements and the Owner shall not be responsible for the acquisition of rights of way or easements necessary for the construction of the West Spine Road between Route 50 and Tall Cedars Parkway.

I. Crosswalks

Concurrent with or prior to first record plat or first site plan approval, whichever occurs first in time, the Owner shall construct and/or bond for construction pedestrian crosswalks in the form of pavement striping across Relocated Route 659 connecting the site access point to the Community Park, if acceptable to VDOT.

J. Cash Contribution toward Transit/Park&Ride/Ride-Share Programs and/or Road Improvements

The Owner shall pay the County a cash contribution in the amount of Five Hundred and 00/100 Dollars (\$500.00) for each residential unit constructed on the Property. Such contribution shall be paid prior to the issuance of the zoning permit for each residential unit. Such funds shall be used for the construction of regional road improvements, including right-of-way acquisition in the Dulles Community Planning Subarea and/or Transit/Park and Ride/Ride-Share Programs in the Dulles Community Planning Subarea. The per unit cash contributions proffered in this paragraph shall be adjusted annually in accordance with the Consumer Price Index ("CPI") published by the Bureau of Labor Statistics, U.S. Department of Labor, beginning one year from the approval date of the rezoning of the Property, with 2005 as the base year.

V. CAPITAL FACILITIES/RECREATION AND OPEN SPACE/TREE PRESERVATION

A. Capital Facilities Contributions

The Owner shall pay Loudoun County a one-time capital facility cash contribution in the amount of TWENTY ONE THOUSAND SIX HUNDRED SIXTY TWO AND 89/100 DOLLARS (\$21,662.89) for each market rate unit (the "Capital Facilities Contribution") constructed on the Property. The Capital Facilities Contribution shall be paid prior to issuance of the zoning permit for each market rate residential unit. The amount of the Capital Facilities Contribution shall escalate in accordance with the Consumer Price Index from the base year of 2004.

B. Pedestrian Circulation and Recreation

1. The Owner shall construct a pedestrian circulation system consisting of sidewalks and trails on the Property in substantially the same location as illustrated on Sheets 5 through 7 of the Concept Plan. Sidewalks need not be constructed in locations where trails are constructed to provide the pedestrian circulation linkage depicted on Sheets 5 through 7 of the Concept Plan, but shall be constructed on both sides of each road within the single family detached areas of the Property and in front of the single family attached and multi-family units. Sidewalks and trails shall be constructed at a width and of materials as required by the FSM. Sidewalks and trails shall be constructed in phases concurrently with the development of land in areas adjacent to such sidewalks and trails and shall be subject to an easement providing access to the general public in addition to residents of the Property.

2. The Owner shall construct and convey to the HOA the active recreation uses in the area of the Property designated Community Park/Active Recreation on Sheets 6 and 7 of the Concept Plan and identified in Proffer I.A. The active recreation uses shall be completed prior to the issuance of the 175th residential zoning permit for the Property. At a minimum the uses shall include but not be limited to:

- 5,000 square foot Community Center with 25 meter (minimum) pool
- 1 tennis court
- 1 multi-purpose court
- Pedestrian trail
- Open Space and Tree Preservation Area
- Tot lot

3. The Owner shall construct and convey to the County the active and passive recreation uses as shown on the Concept Plan, including parking, in the area of the Property designated Community Park (Civic Space), located on the west side of Relocated Route 659, shown on Sheets 6 and 7 of the Concept Plan and identified in Proffer I.A. The Community Park shall be completed and conveyed no later than the issuance of the 300th residential zoning permit for the Property. If the County declines acceptance of the area, the parcel shall be conveyed to the HOA.

4. Except as set forth in Proffer V.B.3. above, as adjacent areas of the Property receive record subdivision plat approval, the Owner shall develop and convey to the HOA the trails, greens and open space areas illustrated on Sheets 5, 6 and 7 of the Concept Plan. The declaration of covenants, conditions and restrictions recorded against the Property shall require the establishment of maintenance procedures and sufficient funding so that the HOA will have the financial ability to maintain such facilities in a decent clean, safe and healthy condition for use by residents of the Property.

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C. Tree Save Area

The Owner shall prepare and submit to the County a Tree Conservation Plan of the Property prior to or current with the submission of the first preliminary subdivision plan or first site plan, whichever is first in time, for the Property. Within the areas illustrated as Tree Save areas on Sheets 6 and 7 of the Concept Plan, the Owner shall preserve existing healthy trees, provided that existing trees may be removed in the Tree Save areas for construction of trails illustrated within such areas, and utilities, including stormwater management, necessary for development of the Property. The boundaries of these Tree Save areas shall be delineated on the construction plans approved for each section of the development. The "Tree Save" areas located adjacent to land disturbing areas shall be protected by fencing during the construction phase of development. Such fencing shall consist of a four foot (4') high orange plastic fence attached to wooden posts. The tree protection fencing shall be installed prior to any land disturbing or clearing activities occurring on the Property and shall be clearly visible to construction personnel. If, during construction on the Property and prior to bond release, it is determined by the County in consultation with the project arborist that any of the healthy trees located within the Tree Save area boundaries have been damaged during construction and will not survive, then the Owner shall remove each such tree and replace each such tree with two 2 ½ - 3 inch caliper deciduous trees. The placement of the replacement trees shall be in the area of each such tree removed, or in another area as requested by the County. Clearing of scrub and understory trees within the "Tree Save" areas shall be permitted to create enhanced park spaces.

D. In General

The Owner shall cause any residential units or community civic uses constructed on the Property, except for the Community Park, to conform with a uniform landscaping theme using complimentary landscaping materials, design and signage which shall be prescribed for the project as a whole in the covenants, conditions and restrictions for development of the Property. As an enhancement, the Owner shall cause to be planted one (1) ornamental tree for each single family detached lot, each tree being at least three (3) inches in caliber and at least eight (8) feet in height. Any lighting and signage provided on the Property shall comply with the requirements of the Zoning Ordinance unless modified otherwise.

VI. EMERGENCY SERVICES

A. Owner Contribution

At the time of the issuance of each zoning permit, the Owner shall make a one time contribution of One Hundred Twenty Dollars (\$120.00) for each residential dwelling unit constructed on the Property, which shall be payable to the County for distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Such contribution shall be adjusted annually in accordance with changes to the CPI from a base year of 1988. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing fire and rescue services to the Property. Notwithstanding the foregoing, at such time as the primary fire and/or rescue service to the Property is no longer provided by an incorporated volunteer company, the obligation to make the

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contributions listed within this paragraph shall cease or be reduced by half if only one service is no longer provided by an incorporated volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as it is the primary provider of fire and rescue services to the Property.

B. Sprinkler Systems

The Owner shall require all builders to provide, as an option to purchasers of single-family residences, the opportunity to purchase and have installed residential sprinkler systems for each such residence. The Owner shall install adequate infrastructure to ensure adequate water flow and pressure for said sprinkler systems. This proffer shall not require the builders to install such sprinkler systems in residences on the Property unless the purchasers of such residences choose to exercise such option prior to the start of construction and to pay associated costs in association with such purchase and installation. Any homes used by the Owner on the Property for marketing purposes shall be constructed with the sprinkler option.

VII. HOMEOWNERS' ASSOCIATION

The Owner will establish a Homeowners' Association prior to the approval of first record subdivision plat or site plan on the Property, whichever is first in time. The Homeowners' Association shall have among its duties maintenance of the common area amenities specified herein, including the amenities in the Community Park/Active Recreation Area and the Community Park /Civic Space (except if the Community Park/Civic Space is dedicated to the County), private streets/alleys, private parking areas in all townhouse and community recreation areas, stormwater management facilities, common areas, including open space, trails and play areas. Homeowners' Association documents, which are satisfactory in form to the County, shall be submitted for review and approval prior to the approval of the first application for record subdivision plat or first site plan, whichever is first in time for the Property, including but not limited to provisions for garage parking restrictions, trash removal, and landscape maintenance.

VIII. EXISTING WELLS AND DRAINFIELDS

In accordance with County Health Department requirements, the Owner shall abandon all existing wells and drainfields located on the Property.

IX. TYPE 1 SOILS SURVEY

The Owner shall prepare and submit a Type 1 Soils Survey of the Property prior to submission of the first preliminary subdivision plan or first site plan, whichever is first in time, to the County.

**C. D. Smith
ZMAP 2002-0003
Proffer Statement**

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X. ARCHEOLOGICAL SURVEY

Prior to any land disturbance and/or approval of any record plat or site plan, whichever occurs first in time, for the Property, the Applicant shall provide the County with the results of a Phase II Archeological study for the site identified as 44LD854 in the Phase I Archeological Study prepared by Thunderbird Archeological Associates, Inc. If a Phase III Archeological Study is recommended for site 44LD854 as a direct result of the Phase II Study, the Phase III will be conducted prior to any land disturbance and/or approval of any site plan (whichever occurs first) for the Property. All future land development submissions shall depict the location of the site.

Notwithstanding the above, the Owner shall not be required to perform any additional archeological studies beyond the previously performed Phase I for site 44LD854 if the site remains undisturbed during the course of development.

XI. OFF-SITE LAND DEDICATION

Within thirty (30) days of approval of ZMAP 2002-0003, the Owner shall submit to the County all necessary documentation to convey to the County an approximately 1.74 acre parcel of land, identified as Loudoun County Tax Map 100 Parcel 40A (MCPI# 206-48-3007), for use by the C.S. Monroe Technology Center as a part of their residential Building Construction program. Once construction of a residential unit is completed, the residence may be conveyed to a third party for residential use.

[SIGNATURE ON FOLLOW PAGE]

C.D. Smith
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XII. BINDING EFFECT

The Owner warrants that he owns all interests in the Property; that he has full authority to bind the Property to these conditions; and that no signature from any third party is necessary for these Proffers to be binding and enforceable in accordance with their terms and the proffers are entered into voluntarily.

TWO GREENS/KIRKVEST, LLC

By: [Signature] (SEAL)

Name: Jim Duszynski

Title: Vice President

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Fairfax, to-wit:

Before the undersigned, a Notary Public in and for the aforementioned jurisdiction, personally appeared Jim Duszynski, as Vice President of Two Greens/Kirkvest, LLC, who acknowledged that he executed the foregoing Proffers with the full power and authority to do so.

IN WITNESS WHEREOF, I have affixed my hand and seal this 11 day of October, 2005.

Emily A. Mann
Notary Public

My Commission Expires: August 31, 2009

CITY OF SMITHSPROOF, MISSISSIPPI Zoning Ordinance January 1, 2011	
1.	Section 3-507(B)(2) to eliminate the garage set back requirement of 20 feet from the front line of buildings.
2.	Section 3-511(A) and 3-610(A) to reduce the 25 foot minimum setback from rights-of-way other than arterial and collector roads to a 10 foot minimum setback for all units.
3.	Sections 3-511(C), 4-110(B) of the revised 1993 Zoning Ordinance and Sections 1245.01(2), 1245.05(1) of the Loudoun Subdivision Ordinance to allow for single family detached units to be accessed by private streets.
4.	Section 3-607(B) to allow a maximum height of 55 feet for a multi-family structure without additional setbacks.
5.	Section 4-109(E) to permit building heights at the edge Property boundary for multi-family units up to 55 feet and for single family detached and attached units up to 35 feet.
6.	Section 4-110(I)(2): to modify regulations to eliminate 50' buffers between land bays.
7.	Section 5-200(A)(6) to permit covered multi-family unit entry porches to project five feet into the front yard.
8.	Section 5-1414(A): to eliminate the buffer yards required between residential unit types for the internal blocks and landbays in the development.
9.	Section 7-803(C)(1)(a) to reduce the front yard for single family detached units from 15' minimum to 10' minimum.
10.	Section 7-803(C)(1)(c) to reduce the rear yard for rear loaded single family detached units from 25' to 10'
11.	Section 7-803(C)(2)(a) to reduce the front yard from 15' minimum to 10' minimum for townhouse and duplex units.
12.	Section 7-903(C)(2)(a) to reduce the front yard for multi-family units to 10' from the back of the curb.
13.	Section 7-903(C)(2)(b) to reduce the side yard for multi-family units to 8', including corner lots.
14.	Section 7-903(C)(2)(c) to reduce the rear yard requirement to 15 feet for multi-family units where vehicular access to parking is provided at the rear of the lot.







Loudoun County, Virginia
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Department of Building and Development
Zoning Administration / MSC# 60
1 Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000
Administration: 703-777-0397 • Fax: 703-771-5215

February 5, 2010

Sara Howard-O'Brien
Land Management Supervisor
Loudoun County Public Schools
Department of Planning and Legislative Services
21000 Education Court
Ashburn, Virginia 20148

(sent via email: sara.howardobrien@loudoun.k12.va.us)

Re: CD Smith - Adjustment of Proffered County Park

Dear Sara:

I am writing in response to your letter to Dan Schardein, dated November 23, 2009, in which you sought guidance for changing the approved circulation elements within a proffered park site. I reviewed the material that you provided and discussed this request with representatives from the County's Parks Recreation and Community Services department. I find that the proposed modification to the future County park site is in substantial conformance to the approved C.D. Smith Concept Plan.

The Zoning Map Amendment application for the C.D. Smith Property, ZMAP 2002-0003, was approved by the Board of Supervisors on October 11, 2005, subject to the proffer statement dated October 11, 2005 and the concept development plan dated May 2004, revised through May 12, 2005. There are two proffers that pertain to the layout of the future County park site, which is designated as the Community Park (Civic Space) on the Concept Plan. As stated in the below text, Proffer I.A provides that the property will be developed in substantial conformance with Sheets 1 through 8 of the Concept Plan and specifies the minimum amenities that will be provided in the Community Park (Civic Space).

I. CONCEPT PLAN AND PHASING

A. Substantial Conformity

The Property shall be developed in substantial conformity with Sheets 1 through 8 of the Rezoning Application attached hereto as Exhibit A, dated May 2004, with revisions through May 12, 2005, prepared by Urban Engineering Associates, Inc. (collectively the "Concept Plan"). The Property shall be developed with no more than 455 residential dwelling units consisting of the following mix:

1. Market Rate Dwelling Units
 - 153 single family detached units (maximum)
 - 200 single family attached (maximum)
 - 73 multi-family units (maximum)
2. Affordable Dwelling Units (ADU's)
 - 14 single family attached
 - 15 multi-family units

The development and administration of the ADU's shall be in accordance with the provisions of Article VII of the Loudoun County Zoning Ordinance.

The Owner shall develop the Property in general conformance with the lot layout shown on Sheet 6 of the Concept Plan, except as needed to accommodate final engineering. Sheet 6 of the Concept Plan illustrates the general layout proposed for development of the Property and indicates development constraints on the Property such as open space areas. In addition, recreation uses will be located in the areas designated as the Community Park/Active Recreation and Community Park (Civic Space) as shown on the Concept Plan. At a minimum, a community center, a pool, a tennis court, a multi-purpose court, a tot lot and pedestrian trails shall be located in the Community Park/Active Recreation area. At a minimum, a parking lot, a picnic pavilion, a tot lot, a play meadow, a fishing pond, and pedestrian trails shall be located in the Community Park (Civic Space) area.

Additionally, C.D. Smith Proffer V.B.3 provides that the Owner shall construct the improvements to the Community Park (Civic Space) and convey the property to the County prior to the issuance of the 300th residential Zoning permit as stated in the below proffer text.

3. *The Owner shall construct and convey to the County the active and passive recreation uses as shown on the Concept Plan, including parking, in the area of the Property designated Community Park (Civic Space), located on the west side of Relocated Route 659, shown on Sheets 6 and 7 of the Concept Plan and identified in Proffer I.A. The Community Park shall be completed and conveyed no later than the issuance of the 300th residential zoning permit for the Property. If the County declines acceptance of the area, the parcel shall be conveyed to the HOA.*

Sheet 7 of the C.D. Smith Concept Plan contains the Open Space/Civic Space Plan. The Community Park (Civic Space) is located on the west side of Relocated Route 659 and contains an existing pond in the northeastern portion of the Community Park. A play meadow is depicted in the western portion of the park, along with a centrally located picnic pavilion and tot lot. The entrance road for the park is shown opposite the entrance to the C.D. Smith project; the park road extends in a southwestern direction to Goshen Road. The Summary of Open Space table states that the Open Space/Civic Space shall be approximately 14.57 acres.

Loudoun County Public Schools (LCPS) is proposing to realign the park entrance road in order to provide a secondary access to the future elementary school that will be constructed on the west side

of existing Goshen Road across from the C.D. Smith County park. If the park access road is realigned, the layout of the Community Park (Civic Space) amenities must be adjusted. LCPS has presented two proposed park layouts to the County's Parks Recreation and Community Services (PRCS) division for consideration. Both alternatives provide the required amenities but they are shown in a different location than that of the approved Concept Plan.

I discussed the proposed park modifications with planners from PRCS, who expressed that the proposed alternatives are acceptable with the understanding that the size of the park (approximately 14.57 acres) is not reduced as a result of your proposed modification. Additionally, the parking area for the future County park site must be secured.

The modification to the layout of the future County park site in the C.D. Smith property is deemed to be in substantial conformance with the approved Concept Plan. Section 6-1209(F) of the Revised 1993 Zoning Ordinance defines substantial conformance as:

(F) Substantial Conformance Defined. For the purpose of this Section, substantial conformance shall be determined by the Zoning Administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design or engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials proffered by the applicant.

The required park amenities and access road are being relocated due to the final design of the adjacent school complex. The specific uses and general layout remain the same as those depicted on the approved Concept Plan.

It is noted that a preliminary subdivision plat was approved for the C.D. Smith Property, SBPL 2005-0042. A record plat for the future County park site was submitted, SBRD 2007-0035, but the application has become inactive. A site plan, STPL 2008-0047, was submitted for the C D Smith Property Sec 8 Community Park; this application has also become inactive. These applications will need to be revised to reflect the modifications that LCPS is proposing to the future County park site.

This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property.

Please be advised that any person aggrieved, or any officer, department or agency of Loudoun County affected by an order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the provisions of the *Zoning Ordinance* may appeal said decision within thirty days to the Board of Supervisors in strict accordance with Section 15.2-2301 of the *Code of Virginia*. This decision is final and unappealable if not appealed within 30 days.

If you have any questions concerning this correspondence, please contact me via email (susan.glass@loudoun.gov) or you may call me at 703-777-0251.

Sincerely,



Susan Glass
Proffer Manager

Cc via email: Dan Schardein, Zoning Administrator
Stevens Miller, Dulles District Supervisor
Val Thomas, Zoning Planner
Mark Novak, Chief Park Planner, PRCS
Brian Fuller, Planner, PRCS
Neelam Henderson, Engineer, Building & Development
Trish Baker, Planner, Building & Development
Sam Adamo, Executive Director, LCPS Planning & Legislative Services
Chris Rudy, VP of Land Development, Greenvest LC (Property Owner Representative)







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1 Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000
Administration: 703-777-0397 • Fax: 703-771-5215

December 17, 2009

Chris Rudy
Two Greens/Kirkvest LLC
8614 Westwood Center Drive
Suite 900
Vienna, VA 22182

Re: Request for ROW Dedication for Relocated Route 659

Dear Chris:

On behalf of Loudoun County, I am writing to request the dedication of right-of-way for Relocated Route 659 pursuant to the proffers of C.D. Smith. As a follow up to this letter, you will be contacted by staff from Loudoun County Public Schools. Please ensure that Two Greens/Kirkvest dedicates the requested right-of-way.

The Zoning Map Amendment application for C.D. Smith, ZMAP 2002-0003, was approved by the Board of Supervisors on October 11, 2005, subject to the Proffer Statement dated October 11, 2005. Proffers IV.B.1 provides for dedication and construction of Relocated Route 659 prior to the approval of the first record plat or site plan as stated in the proffer text.

B. Construction of Transportation Improvements

Transportation improvements shall be constructed by the Owner or his successor-in-interest in the following manner:

1. *Concurrent with or prior to approval of the first record plat or site plan, whichever is first in time, for the Property, the Owner will:*
 - a. *Dedicate right-of-way 120 feet in width through the Property for Relocated Route 659 and construct or bond for construction a half-section of a four lane divided roadway, including turn lanes as required by VDOT, at the site entrance, between the northern Property boundary and the southern Property boundary.*
 - b. *Construct or bond for construction a half-section of a four-lane divided roadway, including turn lanes as required by VDOT, from the southernmost Property boundary to Braddock Road (Route 620).*

C.D. Smith proffer IV.A provides for advance dedication of right-of-way if others have prepared the construction plans and the Owner is not obligated to incur costs or post bonds in connection with such dedication.

IV. TRANSPORTATION

A. Road Network

Unless otherwise specified in the Proffers, all roads required for access to and within the Property will be constructed in accordance with the County of Loudoun's Land Subdivision and Development Ordinance and the FSM to provide access to the development parcels depicted on the Concept Plan as they are developed. All roads required for access to and within the Property will be designed and constructed in accordance with Virginia Department of Transportation ("VDOT") and County standards, unless modified otherwise. The Owner shall grant a public access easement for emergency vehicles over the private roads developed on the Property concurrently with the development of each section of the Property containing private roads.

The Owner shall dedicate to the County land necessary for construction of public roads which shall include all related easements outside the right-of-way, such as slope, maintenance, storm drainage and utility relocation easements. Dedication of right-of-way and easements shall occur either concurrently with development of each section of the Property or upon request by the County in advance of development on the Property by the Owner if: (1) others have prepared construction plans and profiles consistent with the Concept Plan that require dedication to commence construction; and (2) provided the Owner shall not be obligated to incur costs or post bonds with the County in connection with such dedication.

Loudoun County Public Schools (LCPS) is proposing to construct a high school and an elementary school in the Dulles South area on property that is located along Goshen Road, which is west of the future alignment of Relocated Route 659. The access for the proposed schools would be via Relocated Route 659. Since it is likely that LCPS will construct the high school before development of C.D. Smith reaches the triggers for dedication and construction of the right-of-way for Relocated Route 659, LCPS is planning to construct two lanes of Relocated Route 659 in order to access the School site.

At this time, pursuant to C.D. Smith proffers IV.A and IV.B.1, the County requests that Two Greens/Kirkvest dedicate the required right-of-way for Relocated Route 659 as shown on a dedication plat that will be provided to you by Loudoun County Public Schools. As a follow up to this letter, you will receive correspondence from Sara Howard-O'Brien, Land Management Supervisor at Loudoun County Public Schools, which will contain the draft dedication plat and deed for your review. Ms. Howard-O'Brien can be reached via phone at 571-252-1156 and via email at showard@loudoun.k12.va.us.

It is noted that proffer IV.B.1.b requires the Owner of the C.D. Smith property to construct, or bond for construction, a half section of Relocated Route 659 prior to the approval of the first record plat or site plan. Site plans and record plats being reviewed for the C.D. Smith project, but none have been approved yet. Proffer IV.C provides for a cash equivalent contribution to be paid to the County if the road improvements are constructed by others. In the event that the LCPS constructs Route 659 Relocated, a separate request for the cash equivalent contribution will be sent to Two Greens Kirkvest.

C. Cash Equivalent Contribution

Unless otherwise provided in these proffers, the Owner shall contribute to the County, or its designee, including a Community Development Authority ("CDA") or one or more private parties who collectively agree to construct public roadway improvements, an amount equal to the actual cost of constructing the transportation improvements (in the event the improvement is constructed) or an amount equal to the bonded cost estimate (in the event the improvement is bonded for construction), described above in Proffer IV.B 1.a and b and IV.B 2.a, in lieu of actual construction if said improvements have been either constructed or bonded by others prior to bonding for construction by the Owner. For the purposes of determining the in-lieu-of contribution, construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based on paid invoices. Such contribution in lieu of actual construction shall be paid at the time the Owner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, such contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway improvements in the same Planning area as the Property.

This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property.

Please be advised that any person aggrieved, or any officer, department or agency of Loudoun County affected by an order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the provisions of the *Zoning Ordinance* may appeal said decision within thirty days to the Board of Supervisors in strict accordance with Section 15.2-2301 of the *Code of Virginia*. This decision is final and unappealable if not appealed within 30 days.

If you have any questions concerning this correspondence, please contact me via email (susan.glass@loudoun.gov) or you may call me at 703-777-0251.

Sincerely,



Susan Glass
Proffer Manager

**Cc via email: Dan Schardein, Zoning Administrator
Stevens Miller, Dulles District Supervisor
Sara Howard-O'Brien, Land Management Supervisor, LCPS
Mike Seigfried, Assistant Director for Land Subdivision
Nancy Berfield, Permits Proffer Manager**